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JAMES D. MAHER,

IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1916.

LOUIS H. DENEE,
Plaintiff in Error,

vs.

W. M. RIDPATH,
Respondent.

No. 147

BRIEF OF RESPONDENT.

D. W. HENLEY,
Attorney for Respondent,
Spokane, Wash.

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IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1916.

LOUIS H. DENEE,
Plaintiff in Error,

vs.

W. M. RIDPATH,
Respondent.

No. 449.

BRIEF OF RESPONDENT.

D. W. HENLEY,
Attorney for Respondent,
Spokane, Wash.

STATEMENT.

The respondent brought his action in the Superior Court of Spokane County, Washington, under the forcible entry and detainer act to remove the plaintiff in error from his premises (described in his complaint), charging the plaintiff in error with breaking his enclosure and entering upon his premises in the night time, and in the absence of respondent, and thereafter, the respondent notified the plaintiff in error to vacate and remove from said premises and demanded in writing the possession thereof, which the plaintiff in error refused to do for a period of more than three days. Whereupon, the respondent, on the 31st day of March, 1914, for the restitution of said premises commenced his action, praying for the issuance of a writ of restitution and for his damages and double damages under the statute.

Said premises had been in the actual, peaceable and undisturbed possession of the respondent and his grantors for more than twenty years next preceding the trespass of the plaintiff in error (Record, p. 17), and were then in such actual and peaceable possession, and the premises demanded were improved and occupied by the respondent as a farm and were enclosed by a substantial, stand-

ard farm fence, which the plaintiff in error broke down in entering the premises in question.

Plaintiff in error denied the possession of respondent and the breaking and entering in the night time, or at all, upon said premises, but the real contention of plaintiff in error is based upon the matter contained in his affirmative defense, in which he alleges that said lands are and ever have been unsurveyed and unappropriated lands of the government, a part of its public domain and open to settlement under the homestead laws of the United States—under which he entered upon said premises in 1904 for the purpose of establishing a homestead and which settlement he has not abandoned.

Plaintiff in error further alleges that at the time of his alleged attempted settlement, respondent was not in the possession of said premises but was wrongfully opposing the settlement of plaintiff in error thereon and ordering him off of said premises.

The entire affirmative answer of plaintiff in error was by the trial court upon motion stricken and this ruling was sustained by the Supreme Court, and it is this action of that court of which plaintiff in error complains and which comprises the

sum and substance of all the assignments of error made to the decision of the Supreme Court.

ARGUMENT.

Plaintiff in error puts the proposition for which he contends in this language: "The question here presented is whether or not in the administration of the laws in a state court, an act of the state legislature shall be considered paramount to an act of congress; or, put in another form, will an act of the state legislature be enforced when by its enforcement a litigant will be deprived of a substantial right guaranteed him under an act of congress? Or, going still further, will the legislative act only be considered and the congressional act swept aside as unworthy of consideration?" This statement of the question involved is erroneous. The real question is: shall the plaintiff in error, under the guise of attempting to make a homestead settlement under the homestead laws of the United States be permitted to invade the peaceable possession of another and by such unlawful act acquire substantial rights which the government will protect?

The respondent in his complaint alleges his possession for a period longer than the time fixed

by the forcible entry and detainer statute of the state (Rem. 1915 Codes & Statutes, Sec. 118), *i. e.*, five days' peaceable and undisturbed possession at the time of the trespass of plaintiff in error.

Plaintiff in error denies the possession, or any possession of respondent of said premises, but the Supreme Court of the state in answer to that assertion has said (Record, p. 17): "The plaintiff, for more than twenty years prior to the 9th day of March, 1914, was in the peaceable and quiet possession of seventy-five acres of land in Spokane County. This land was under cultivation and was enclosed by a substantial fence." It is clear that plaintiff in error is either intending the court to understand that, as applicable to this cause there can be no possession unless it is in *his* view rightful, or that, within the purview of the statute, that only is possession which is manual and personal; neither of which views of the law is, we submit, correct. That possession, for the purposes of the forcible entry and detainer statutes, is sufficient which is indicated "where a man in any manner circumscribes a reasonable amount of land, settles on a part of it, and uses the residue as other men do." In such case "he is in the possession of the whole so as to maintain a prose-

cution for forcible entry, on any portion of it."

Commonwealth v. Robinson, Add. (Pa.) 14.

See:

State v. Bennett, 18 Am. Dec. 663.

The plaintiff in error attempted to initiate his homestead right upon the premises of respondent by going clandestinely, in the absence of the respondent and in the night time, upon property more than twenty years in his actual, peaceable possession; and because the court refuses to allow the question of title to be injected into the case, we have the assertion that under the ruling of the court, the homestead laws are superseded by the forcible entry statute of the state.

The present forcible entry and unlawful detainer statutes, which provide a civil remedy, are evolved from the English act — which was criminal — and provides a remedy for the protection of the actual, peaceable possession of realty, whether that possession is rightful or otherwise, against forcible invasion—their object being to prevent disturbances of the public peace and to forbid persons from righting their wrongs in that direction by their own efforts and by violence. Therefore, the only questions involved are "the possession of the

plaintiff" and the use of force by the defendant. Title cannot be inquired into, and the right of possession, as distinguished from the fact of actual possession, is not in issue.

Pugh v. Davis, 103 Ala. 316;

Kerr v. O'Keefe, 138 Cal. 415.

If this is a correct statement of the law, then it follows that the court did not err in sustaining the trial court in striking the affirmative answer of plaintiff in error. Such action in no degree tends to supersede the homestead laws of the United States but simply relegates the question of title to the proper forum and apt procedure for the trial of the issue of title.

II.

The first assignment of errors: "that the court erred in holding and deciding that the forcible entry and detainer statutes of Washington supersede and are paramount to the homestead laws of the United States, denying to plaintiff in error the right to show that the lands in question were unsurveyed public lands, * * * and denying to plaintiff in error the right to show his good faith settlement, * * * and also denying him the right to continue such settlement, * * *

and holding that the respondent has the right to the possession and to the use and occupation of the said lands to the exclusion of plaintiff in error; and also denying the right of plaintiff in error to prove that respondent was in possession of a large tract of unsurveyed government land unlawfully, and that he was not qualified to enter upon, use and occupy said land under such homestead laws, or any laws of the United States and was a trespasser upon public lands of the United States," is a misconstruction of the force and effect of the ruling of the court. That ruling is only a re-statement of the law governing actions of this character from the time of the enactment of the civil statutes on the subject of forcible entry and unlawful detainer, which has not been changed—except in a few instances in which special statutory authority has been given for adjudicating title. And there has been no holding of any court that any other prerequisite to recovery is required than peaceable possession at the time of the trespass; that is, under forcible entry and unlawful detainer statutes as such. It therefore follows that the right of the plaintiff in error under the homestead laws of the United States was not questioned in the court of original jurisdiction, nor was any statute of the United States

superseded or set aside. Respondent concedes that in a case where there is a conflict between the federal and the state statutes, those of the state must yield to the federal statutes. But in this case there is no such conflict, and no right of the plaintiff in error under the homestead laws has been violated nor postponed by the rulings of the state courts in this case.

It is granted that under Section 3 of Article IV of the Constitution of the United States "the Congress has power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States," and that in pursuance of said power so conferred, the Congress has passed the laws governing the disposition of the public domain cited by plaintiff in error in his brief; but those statutes must be read in the light of the surrounding facts, to which, in this case, it is the contention of respondent, they are inapplicable. This is an action of forcible entry and detainer, and the practically universal rule is that in such case title cannot be drawn directly into question, and as a defense is always immaterial.

Wilson v. Campbell, 121 Am. St. Rep. 366.

Not only are we convinced that the law of this case is as herein stated, but it has been held by the courts of last resort of various states that the fact that the land involved is a part of the public domain is an immaterial one, since the question of title cannot be litigated in this class of cases, and upon this proposition the following cases are, it seems to us, conclusive:

In the case of *Pettijohn v. Akers,* 6 Yerg. (Tenn.) 448, which was an action in forcible entry and detainer, the land which the action was brought to recover was *public lands of the United States;* but the court—although that question was raised by the pleadings—said:

> "Although the lands belong to the United States, and the state of Tennessee has no right or power to deal with the title thereof, yet, as a matter of policy and jurisdiction, possessions of persons must be protected from obtrusion and violence, regardless of who owns the soil; this is never a subject of inquiry in cases of indictment for writs of forcible entry prosecuted by force of the British statutes or our own.
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> 1 *Russell on Crimes,* 406;
>
> *Act of* 1821, Ch. 14, Secs. 1 to 20.
>
> Were one person permitted to enter upon another by strong hand, force would be met by force and the right of the strongest pre-

vail, and destruction to the first end of government — the protection of the weak and peaceable against the strong and lawless— would follow. It lies not with any man to say to his neighbor: 'You are a trespasser on land of another, or that of the government, and I will turn you off.' The ready answer is: 'The true owner does not object to my occupancy of his premises and you have no right to complain; so far as you are concerned, my possession is lawful and under legal protection.'

The government has the right and power to protect possession, without reference to the character of the titles by which they are holden, to prescribe the boundaries and limits of such possessions. Were it permitted to settle at another's door, though without his enclosure, the certainty of violence would be most manifest. The object of the legislature, by the writ of forcible entry and detainer, is to restrain violence; and it is a part of the law that the interests of society requires to be preserved—'that no one shall with force and violence assert even his own title.'

R. v. Wilson, 8 Term Rep. 361;

1 *Russell on Crimes,* 409.

And such is our statute of 1821, Ch. 14, Secs. 1-20.

In opposition to this assumption, it is admitted the general law of forcible entry is as stated. But it is contended that (451) the occupant law of 1829 intended in fact to confer title upon the trespassers on the lands

> of the United States lying in the district, in plain violation of the acts of congress passed for their protection, which are the supreme law, and ours must give way.
>
> This court, as a co-ordinate branch of the government, is unauthorized to inquire for the motive operating on the legislature when passing the occupant law referred to. Our business is to ascertain if it be obligatory. If it conflicts with the laws of the United States, reject it as void; if not, we must enforce it. So far as its tendency is to preserve the peace of society, the sovereign power of the state is equal everywhere within its limits and jurisdiction, it matters not who owns the soil. The act operates on the person, not the estate; and, as above remarked, it lies not with Pettijohn to say Akers is a trespasser, and without the protection of the law. If he has violated the right of soil of the United States, it is for that power to redress the injury, not the plaintiff in error, in its behalf."

The case of *Cunningham vs. Green*, 3 Ala. 128, was also an action in forcible entry and detainer and the land for which this action was brought was public lands of the United States, and it was attempted by the defendant to justify his entry thereon as against the possession of the plaintiff upon that ground; but on that point the court said:

> "3. The complaint is said to be also defective in not alleging positively and directly that the plaintiff was in possession of the premises sought to be recovered. This ob-

jection is not sustained by the complaint, because, in addition to the allegation that the plaintiff was seized in fee, it is also asserted that the defendant entered with force and arms, and unlawfully put out and disseized the plaintiff from the peaceable possession of the lands described. This we consider as a positive averment; the defendant was in the possession of the lands described at the time of the unlawful entry.

4. The principal question, and the only one perhaps, on which much reliance has been placed, is that raised by the exclusion of the evidence offered by the jury.

It sometimes happens that the primary courts are much embarrassed by the production of evidence which seems to them as introducing a question of title, when in reality the only object and effect of the evidence is to show the manner and extent of the possession. In this case, it is said, the evidence offered was introduced for the purpose of controverting facts alleged by the plaintiff, and in order to justify the taking and continuing in possession of some portion of the half section of which the plaintiff was not in the actual possession at the time of the entry. The allegation of seizen in fee was unnecessary to be proved, as is shown by the case of *Lecatt v. Stewart,* 2 Stew. 474. The only matter in issue in such cases as this is possession, and it is immaterial whether it is connected with title or otherwise. The evidence was, then, inadmissible for the purpose of controverting this allegation, because, if it is permitted to be disproved, a question is made which involves the title, in direct opposition to the words of the statute."

In *Mears v. Dexter* (Va.), 11 S. E. Rep. 540, which was an action of forcible entry and detainer, and the land for the recovery of which the action was brought was state oyster lands, the court said:

> "It does not appear, however, nor is it pretended, that he paid to the state more than one year's rent; and upon this fact the defendants chiefly rely in their petition of appeal. But, conceding that no more than one year's rent was paid, that does not affect the case. The plaintiff was in actual possession when the defendants entered; and that entry being unlawful, he is entitled to recover. The remedy for a forcible or unlawful entry or detainer was designed to protect the actual possession, whether rightful or wrongful, against unlawful invasion, and to afford summary redress and restitution, and the rule applies as well to public as to private lands; for, although there can be no adverse possession against the commonwealth, yet a person in actual possession of land of the commonwealth is entitled to all the remedies which the law provides for the protection of the actual possession against tort feasors. Any possession, it has been held, is a legal possession against a wrongdoer.
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> *Olinger v. Shepherd,* 12 Grat. 462;
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> *Power v. Tazewell,* 25 Grat. 786;
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> *Davis v. Mayo,* 82 Va. 97;
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> *Fore v. Campbell,* Id. 808, 1 S. E. Rep. 180."

The case of *Hammond v. Doty,* 56 N. E. Rep. (Ill.), 371, which is also an action of forcible entry and detainer, brought to obtain possession of certain lands claimed by defendant to be state lands lying within the meander lines of "Dyson's Lake," the court, in commenting on the facts of public ownership, which was the defense in the case, said:

> "Appellants complain that certain proofs offered by them was rejected upon the trial of the case. The object of the proof so offered was to show that the lands in controversy were located within the meander lines of what is designated as 'Dyson's Lake,' in sections 30 and 31 in said township. Appellants claim that the lands in question, being within the meandered lines of said lake, did not belong to the appellee, but that the title thereto was held by the state in trust for the people.
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> *Trustees v. Schroll,* 120 Ill. 509, 12 N. E. Rep. 243;
>
> *Fuller v. Shedd,* 161 Ill. 462, 44 N. E. Rep. 286.
>
> We are of the opinion that the court below committed no error in refusing to receive the evidence which appellants thus sought to introduce. In an action for forcible entry and detainer only the immediate right of possession is involved, and the title to the premises cannot be called in question. The question of title in this action cannot be considered by the jury.

Phelps v. Randolph, 147 Ill. 335, 35 N. E. Rep. 243;

McDole v. Shephardson, 156 Ill. 383, 40 N. E. Rep. 953.

> Indeed, the instructions asked by both parties in this case announce the proposition that in the present action the title to the property is not involved. The material question for the jury to determine was whether, in fact, at the time alleged, the appellee was in the actual, peaceable possession of the premises in question, and whether the defendants below (the appellants here) entered upon such possession against the will of the appellee (the plaintiff below), and retained such possession. The jury was properly instructed upon this question. They found in favor of the appellee and the judgment of the Circuit Court, based upon their verdict, has been affirmed by the Appellate Court. The question of fact, as to which the jury were thus instructed, has been determined in appellee's favor by the lower courts, and their action in this regard is binding upon us."

And the latest case coming to our knowledge,

Dutcher v. Sanders (Cal.), 129 Pac. Rep. 809,

has again affirmed the doctrine contended for and supported by the foregoing cases.

This latter case was an action in forcible entry and detainer and involved lands belonging to the

public domain; which latter fact was relied upon as a defense in this, as in the other cases above quoted from; but upon this subject the court, after reciting the findings of the trial, court, that respondent was in the actual, peaceable possession of the premises and had been for a period of years theretofore, and the entry of defendant during the absence of plaintiff and the service of the notice to vacate—which defendant failed to obey—said:

> "Conceding all this to be true, appellant's contention is that the effect of these findings was nullified by the court finding, in accordance with an allegation of the answer, 'that on or about the 16th day of May, 1910, the Commissioner of the General Land Office Department of the Interior of the United States, in the case of *Louis N. Sanders v. Orpha C. Johnson and Gordon L. Dutcher, Assignee,* canceled a previously existing desert land entry upon said land, under which said desert land entry the said Gordon L. Dutcher was claiming said land, and awarded a preference right of entry to said Louis N. Sanders; that on or about the 1st day of August, 1910, the defendant Louis N. Sanders made homestead entry of said land at the United States Land Office at Los Angeles, Cal., and was given homestead receipt therefor.' The allegation had no proper place in the answer, and evidence in support thereof should have been excluded. Had the court given the finding the effect contended for by appellant, the error would have been ground for reversal upon an

appeal prosecuted by plaintiff. Such facts, so found, did not warrant the action of defendant in retaining possession of the land, and by its conclusion of law based upon the findings, the trial court so held. We are in full accord with this ruling."

A parallel case to this is found in the California reports. In the course of the opinion is to be found this statement of the case and the law:

"Nor did the court err in striking out a portion of the defendant's answer and excluding the proof of the averments so stricken out. These allegations were, in substance, that the land in contest is a portion of the public domain of the United States; but is at present withdrawn from entry and sale; that in 1867 the defendant erected a cabin on it with the intention to acquire a right to it as a homestead, under the laws of the United States, so soon as the land should be subject to entry for that purpose; that in the following year one Ewing, against the will of the defendant, and without right, removed the cabin, and afterwards sold whatever right he had to the land to plaintiff, who in November, 1869, hauled to the land lumber for the purpose of erecting a house upon it, and plowed the greater portion of the land and put it in grain; that, thereupon, the defendant consulted an attorney as to his rights, and the attorney, together with the land officers of the United States for that district, advised him to enter upon the land and erect a cabin, with a view to acquire a prior right to a homestead claim as soon as the land should become subject to entry for that purpose; that he

was qualified to acquire a homestead right; and acting under the advice aforesaid, and with a *bona fide* intention to acquire such right, he entered in February, 1870, peaceably and quietly upon the land, and has ever since remained in possession. These facts, if proved, would not have justified the entry of the defendant upon land in the actual occupancy of the plaintiff. It is not pretended that the land was then subject to entry under the homestead act; and though it was public land, *non constat,* that it will ever be subject to entry as a homestead. The mere hope or expectation, however well founded, that at some future time the land might become subject to entry for that purpose, could afford no justification for an invasion of the actual possession of the plaintiff. However honestly the defendant may have believed that he had a right to enter, his entry was unlawful; and having been made in the absence of the plaintiff, and the defendant having refused to surrender the possession, after a proper demand, the case comes fully within the third section of the Act."

Randall v. Falkner, 41 Cal. 245.

It will be noticed that the same contention is made as to the prior effort of defendant in that case, as is made by the plaintiff in error here; that he intended by his entry—claimed to be peaceable—to initiate a homestead right. But the court, there, as here, denominates his entry, however honestly made, as unlawful, and that because the land was in the actual, peaceable possession of the plaintiff.

It is also to be noticed that in that case the plaintiff entered by the purchase of whatever right Ewing had, if any; but at least the right peaceably to enter, which he did; but the entry of the defendant in that case was unlawful because made upon the actual possession of plaintiff, in his absence, and possession refused upon proper demand.

In the instant case, the entry was made in the night time and in the absence of the respondent; which, being upon the actual possession of respondent, was and is an unlawful entry, and it is certain that the alleged right initiated in a plain violation of law, can not avail the plaintiff in error here. Such claim of the plaintiff in error is based only upon the entry in the night time and in the absence of the respondent, and his continued holding after demand for possession, a continuance of the wrong. And it has been held by the Department that a settlement established by breaking an enclosure will not be upheld.

Jones v. Kerby, 13 L. D. 702.

In reply to the claim of the respondent that he was and for a long time had been in the peaceable possession of the premises, the plaintiff in error claims the right to a homestead upon the premises of respondent enclosed within his fence

because, as he claims, the same is public land and that his entry was peaceably made. The record shows that plaintiff in error entered in the night time and in the absence of the respondent, and by reason of the fact that under those conditions no violence was resorted to by the plaintiff in error, and no outcry or protest was then made by respondent, that therefore the entry was peaceably and lawfully made, so as to uphold his entry. And he italicizes his quotation from Stovell v. Heenan, to call attention to the right of an entryman who enters "without voilence." But that is not this case. Here the respondent was in possession under a deed from his grantors who, together with himself "had the peaceable and quiet possession for more than twenty years" (Record, p. 17); and while the deed was not offered or received by the trial court as evidence of title but as additional evidence of the possession of respondent, yet it is necessarily to be viewed as color of title, which will entirely and at all events remove the case from the effects of the federal statutes cited by plaintiff in error.

Under the circumstances of this case as detailed herein, the Act of February 25th, 1885, 23 State L. 321, 322, is not applicable to same, but was

passed on account of the practice which had obtained in the West of "enclosing large areas of land of the United States by associations of cattle raisers, who were mere trespassers without shadow of title to such land, and surrounding them with barbed wire fences, by which persons desiring to become settlers upon such lands were driven or frightened away, in some cases by threats of violence. The law was, however, never intended to operate upon persons who had taken possession under a *bona fide* claim or color of title; nor was it intended that, in a proceeding to abate a fence erected in good faith, *the legal validity of the defendant's title to the land should be put in issue.* It is a sufficient defense to such a proceeding to show that the lands enclosed were not public lands of the United States, *or that defendant had claim or color of title, made or acquired in good faith.*"

Cameron v. United States, 148 U. S. Rep. 305.

As to what is color of title, it is said by Daniel, J., in *Wright v. Mattison,* 18 Howard (U. S.), 50-60:

> "The courts have concurred, it is believed without an exception, in defining 'color of title' to be that which in appearance is title but which in reality is no title. They have

> equally concurred in attaching no exclusive or peculiar character or importance to the ground of the invalidity of an apparent or colorable title; the inquiry with them has been whether there is an apparent or colorable title under which an entry or claim has been made in good faith. * * * A claim to property under a conveyance, however inadequate to carry the true title to such property, and however incompetent might have been the power of the grantor in such conveyance to pass title to the subject thereof, yet a claim asserted under the provisions of such a deed is strictly a claim under color of title."

See, also:

Gregg v. Sayer, 8 Pet. (U. S.) 244.

And since it is thus authoritatively stated that the statute under which defendant claims the right to urge his affirmative answer does not apply to cases such as this, where the entry and holding is under color of title, and in good faith, it is evident that the court did not err in sustaining respondent's motion to strike same. Or rather, it is apparent, from the fact of the conveyance of the demanded premises from his grantors to respondent, that in no event would the plaintiff in error succeed in his attempt to initiate a homestead in the manner attempted on the enclosed lands against the protest of respondent, because of the statute and its construction by this court.

It follows inevitably from this statute, that if respondent had possession in good faith, and especially under color of title, that he had the right to have his holdings enclosed; and if so, then that enclosure could not be so broken, against his protest, as by that act to confer any right upon plaintiff in error. Respondent is in possession, holding in good faith and is in possession under color of title, and under these circumstances, as against his protest, the plaintiff in error could not enter his enclosure except as a trespasser, and the Land Department has said that no homestead so initiated will be upheld.

Respondent has maintained throughout the progress of this cause that the contention of plaintiff in error (that the action of the trial court and the affirmance of that action by the Supreme Court of Washington was in effect a superseding of the homestead laws of the United States, by the local forcible entry and unlawful detainer statutes) is a misconstruction of the effect of the state statutes upon the rights of the plaintiff in error under the homestead laws. If the seventy-five acres of respondent's farm sought by plaintiff in error was in fact a part of the public domain at the time he attempted to initiate

his homestead, it is doubtless so now, so far as his rights are concerned. But if so, it is equally clear that he must resort to his appropriate remedy to ascertain that fact. Respondent being in possession in good faith and under color of title, at least, cannot be ousted by the summary method adopted by plaintiff in error. That is, under such state of facts his homestead rights will not be recognized. And this court has said, speaking of entries made under such conditions as are disclosed in this case:

> "The right to make a settlement was to be exercised upon unsettled land; to make improvements upon unimproved land. To erect a dwelling did not mean to seize some other man's dwelling. It had reference to vacant land, to unimproved land, and it would have shocked the moral sense of the men who passed these laws if they supposed that they had extended an invitation to the pioneer population to acquire inchoate rights to the public lands by trespass, by violence, by robbery, by acts leading to homicides and other crimes of less moral turpitude."

Atherton v. Fowler, 96 U. S. 519;

Belk v. Meagher, 104 U. S. 287.

There is no other question in this cause now before the court than that embraced in the first assignment of errors, and it is our contention that

the authorities herein cited on the various points growing out of that assignment, are conclusively settled against plaintiff in error therein.

As has been said before, the forcible entry and unlawful detainer statutes of the various states do not admit questions of title to be raised; their only object being, in the interests of peace, to determine the possession at the time of the trespass, except in a very few instances in which special provision is made for the trial of title in such cases. But plaintiff in error has contended that such state statutes cannot and do not reach to or affect property, the title of which is in the government of the United States. The authorities herein cited upon that subject apply the same rule to such property as is to be found in the various state statutes, as applicable to privately owned property, and especially that recognized by the Supreme Court of the state of Washington in the following cases:

Gore v. Altice, 33 Wash. 335;

Columbia & P. S. Ry. Co. v. Moss, 44 Wash. 590;

Decker v. Verloop, 73 Wash. 10;

Ridpath v. Denee, 85 Wash. 322.

But such ruling of the Supreme Court of Washington did not and does not leave the plaintiff in error without his remedy. Since the state has exclusive right to prescribe the remedies in its own tribunals for the enforcement of rights and the redress of wrongs,

Briggs v. Penn, 16 Pet. (U. S.) 539;

McGoom v. Scales, 9 Wall. (U. S.) 23,

and since the state has seen fit to limit the inquiry in this class of cases to the question of prior peaceable possession, and since it has been so frequently held that the question of title is of no importance in such a case, it would seem that if the plaintiff in error has any right in, or to the land as public domain, he is remitted to the appropriate remedies provided by the state statute to ascertain the same.

As to the instant case, however, respondent submits that under the statutes of the state of Washington and the law announced by the Supreme Court of the United States, and the decisions of the various states upon similarly worded statutes, there is no error in the decision of the Supreme Court of the state of Washington in this cause.

Respectfully submitted,

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Reese A. Voorhees,